

Central Administrative Tribunal, Principal Bench

Original Application No.2769 of 2002

New Delhi, this the 29th day of October, 2002

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.T. Rizvi, Member (A)

Head Constable Azadvir Singh,
S/o Shri Zeet Singh,
R/o Q.No.18, Police Station Geeta Colony,
Delhi-18

....Applicant

(By Advocate: Shri Sachin Chauhan)

Versus

1. Union of India,
through its Secretary,
Ministry of Home Affairs,
North Block, New Delhi
2. Addl. Commissioner of Police,
Delhi Armed Police,
New Police Lines, Kingsway Camp,
Delhi.
3. Dy. Commissioner of Police
5th Bn, Kingsway Camp,
New Police Lines,
Delhi

....Respondents

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

By virtue of the present application, applicant (Azadvir Singh) seeks setting aside of the order of punishment dated 9.5.2001 and to restore to him his forfeited one year approved service as if it was never there. The suspension period is also claimed to be treated as spent on duty and also for setting aside of the appellate order in this regard dated 19.10.2001.

2. It was alleged against the applicant and others that on the night intervening 4/5.2.2000, he and others while posted in the 1st Bn. DAP on night duty at Vijay Ghat were found consuming liquor in their tent at 11.00PM.

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After that they went to Duty Officer's tent under the influence of liquor and misbehaved with the Duty Officer and other staff. Disciplinary proceedings had been initiated against the applicant and others and the Deputy Commissioner of Police, 1st Bn., DAP recorded that they were habitual delinquents but since they had tendered their unqualified apology therefore, he imposed only punishment of forfeiture of one year approved service for a period of one year. The appeal filed by the applicant had since been dismissed. Aggrieved by the same, the present application has been filed.

3. Learned counsel for the applicant, at the outset, urged that it is a case of no evidence and consequently this Tribunal should quash the proceedings.

4. At the threshold, we deem it necessary to mention that we do not dispute the proposition of law that if it is a case of no evidence, in judicial review this Tribunal would be competent to quash the punishment that has been awarded. But on appraisal of the facts, it is obvious that the said contention is totally devoid of any merit. It cannot be stated that the present matter is one which is based on no evidence. Perusal of the report clearly indicates that evidence was available on the record of the applicant being under the influence of liquor. The defence offered was rejected and it was further held that there was exchange of hot words. The applicant did not act with restraint. Therefore, it is obvious that the plea had simply to be stated to be rejected.

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5. The main argument advanced in this regard was that the past conduct of the applicant has been taken into consideration while awarding the punishment and consequently the punishment so awarded, cannot be sustained. Reliance in this regard was placed on rule 16 (xi) of Delhi Police (Punishment and Appeal) Rules, 1980 which reads as under :

"16 (xi) if it is considered necessary to award a severe punishment to the defaulting officer by taking into consideration his previous bad record, in which case the previous bad record shall form the basis of a definite charge against him and he shall be given opportunity to defend himself as required by rules.

Perusal of the above rule clearly shows that if a severe punishment is to be awarded by taking into consideration the past record, then a definite charge in this regard has to be drawn and concerned person should be given an opportunity to defend himself as required by rules.

6. According to the learned counsel, this is a severe punishment that has been awarded because it was urged vehemently that it affects the promotion of the applicant.

7. The expression "severe punishment" has not been defined under the Delhi Police (Punishment and Appeal) Rules, 1980 or even in Delhi Police Act. It deserves mentioning that almost all types of punishments would

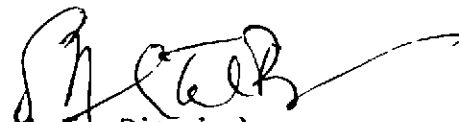
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affect the promotional avenues subject to other conditions. But herein, the disciplinary authority itself has recorded that it is taking a lenient view. Ordinarily in the context dismissal, removal or reduction in rank would be taken to be severe punishments. The expression "severe punishment" cannot draw its colour and strength or expression of major or minor punishments. Severe punishment would necessarily be more than a minor punishment and consequently, in the facts of the present case, we hold that severe punishment was not awarded. Thus if the past conduct was taken into consideration, the above said rule had not been violated.

8. For these reasons, the O.A. being without merit must fail and is dismissed in limine.

Announced.


(S.A.T. Rizvi)
Member (A)


(V.S. Aggarwal)
Chairman

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